



## General Terms and Conditions of Business for the Sale of Gases in Cylinders and Technical Gases in Stationary Storage Tank by Westfalen AG

### 1. Scope

- (1) These General Terms and Conditions (GTC) apply exclusively to all gas supplies and the provision of containers for the supply and storage of gases of Westfalen AG (Westfalen), if and unless otherwise agreed in writing or in text form.
- (2) Deviating conditions of the customer are only valid if they have been confirmed by Westfalen in writing.
- (3) These General Terms and Conditions also apply to entrepreneurs (according to § 14 BGB) for all future transactions, even if no further reference is made to this or no further reference is made to this in later contracts.
- (4) Containers within the meaning of these GTC are mainly cylinders, cylinder bundles, drums, pallets, cryogenic transport vessels and stationary tank systems for technical gases, in particular gas tanks.
- (5) Commercial resale, in particular of rental containers, is prohibited. The commercial resale shall be agreed in separate supply agreements for gases in containers for use and deposit-paid containers.
- (6) Separate General Terms and Conditions apply for liquid gas in stationary storage tanks.

### 2. Quotations, Prices, Conclusion of Contract

- (1) Quotations from Westfalen are subject to change and are not binding. A contract of purchase is only concluded when Westfalen ships the ordered product to the customer and/or confirms the order or dispatch. Confirmation of receipt of an order, such as that sent by email from an on-line portal of Westfalen (confirmation of order receipt), does not yet constitute an order confirmation.
- (2) Quoted prices are ex works, plus the applicable statutory value added tax, plus energy surcharges, excluding transportation and packaging and, if and unless otherwise agreed, will be invoiced in EUROS.
- (3) The quantity "m<sup>3</sup>" refers to a gas condition at 15 degrees Celsius and a pressure of 1 bar.
- (4) Residual contents of containers are not refunded upon their return.

### 3. Delivery and Transportation

- (1) Gases are transported in containers "ex works" (Incoterms 2020). If Westfalen participates in the loading/unloading of goods, it is a mere courtesy. Westfalen therefore does not assume responsibility for an loading and unloading process suitable for a safe operation and transportation.
- (2) Agreed deliveries to the customer are made as part of tours planned and carried out by Westfalen or by service providers commissioned by Westfalen. While the aim is to deliver on time, it cannot be guaranteed.
- (3) The customer guarantees unrestricted access to his filling and unloading facilities during normal operating/business hours.
- (4) Westfalen is entitled to make partial deliveries.
- (5) The place of performance is the respective place of dispatch of the goods.
- (6) In addition, the respective current service level agreement for the delivery and order processing, can be found on the Internet at <https://westfalen.com/de/de/agb>.
- (7) The delivery shall be made to the delivery address specified by the customer, but only within the Federal Republic of Germany.
- (8) Force majeure or other events beyond its control (in particular natural disasters, war, civil war, terrorist attack, pandemic/epidemic, lack of raw materials, loss of supply/delay of suppliers, shortage of product resources, exceptional traffic and/or road conditions, operational disruptions, official orders) the delivery or any other service impossible, a service obligation of Westfalen for the duration of the existence of force majeure or other events beyond its control is excluded.
- (9) Westfalen may also refuse performance if and to the extent that this involves an expense, which is in gross disproportion to the customer's interest in the fulfilment of the sales contract, taking into account the content of the sales contract and the commandments of good faith. Amounts already paid will be reimbursed by Westfalen immediately.
- (10) In the case of a pick-up, the customer is responsible for the proper loading and unloading of the vehicle and for securing the load. He will observe the relevant regulations on accident prevention, storage and transport.

### 4. Warranty

- (1) The object of the contract is exclusively the sold or manufactured product with the properties and features as well as the intended use according to the Operating and Assembly guides, the technical documents or the briefing conducted by Westfalen. Other or further-reaching properties and/or features or a further intended use shall only apply if and to the extent that they have been expressly confirmed by Westfalen.
- (2) If a product is defective at the time of delivery (warranty case), Westfalen shall

at its own discretion replace it with a defect-free product or have it professionally repaired (supplementary performance). The customer is informed that there is no warranty case if the product had the agreed quality at the time of passing of risk. In particular, there is no warranty case in the following cases:

- a) In the case of damage caused by misuse or improper use by the customer,
  - b) in the event of damage caused by the products being exposed to harmful external influences at the customer's (in particular extreme temperatures, humidity, exceptional physical or electrical stress, voltage fluctuations, lightning, static electricity, fire).
- (3) Objections due to obvious defects and/or insufficient quantities of the deliveries must be reported to Westfalen immediately following the receipt of the delivery. The goods in question may not be reused. Complaints regarding the billing for the delivery must be made no later than ten working days after receipt of the invoice.
  - (4) Westfalen does not warrant a fault caused by improper repair by a service partner not authorised by Westfalen.
  - (5) If the type of supplementary performance requested by the customer (replacement delivery or repair) involves an expense, which, in view of the product price, is in gross disproportion to the customer's service interest, taking into account the content of the contract and the requirements of good faith – in particular the value of the object of purchase in a defect-free condition, the significance of the defect and the question whether the other type of supplementary performance can be used without significant disadvantages for the customer must be taken into account – the customer's claim is limited to the other type of supplementary performance. The right of Westfalen to refuse this other type of supplementary performance under the aforementioned condition shall remain unaffected.
  - (6) If the customer returns the goods in order to receive a replacement product, the warranty of the defective product is as follows: If the customer was able to use the goods in a defect-free condition between delivery and return, the customer must reimburse the value of the uses drawn by him. The customer shall pay compensation for loss or deterioration of the goods not caused by the defect, as well as for the impossibility of returning the goods during the period between delivery of the goods and return of the goods which has not occurred due to the defect. The customer has no compensation for the deterioration of the goods caused by the intended use of the goods. The obligation to compensate for the value of a defective product in the event of a warranty shall also be waived,
    - a) if the defect qualifying for withdrawal has only become apparent during processing or transformation,
    - b) if Westfalen is responsible for the deterioration or destruction or if the damage had also occurred at Westfalen,
    - c) if the deterioration or loss has occurred at the customer, although the customer has exercised the same care he takes in his own affairs.
  - (7) The customer's liability for damages in the event of a breach of the obligation to accept returns for which the customer is responsible shall be determined in accordance with the statutory provisions.
  - (8) The customer may, at his discretion, withdraw from the contract or reduce the purchase price if the repair or replacement delivery within a specified period of time did not lead to the condition of the product as stated in the contract.
  - (9) Westfalen's warranty for consumers ends after two years and for entrepreneurs one year after delivery of the goods. The period begins with the receipt of the goods. If delivered gases in a defect-free condition display a regular stability for a period of time which falls within the limitation period for defect rights, the Westfalen guarantee shall only be for the regular stability period of the gas.
  - (10) Westfalen does not guarantee natural wear and tear and improper handling of objects for which Westfalen is not responsible.
  - (11) When carrying out repairs, the guarantee is limited to replaced parts and/or to the flawless execution of the work.

### 5. Liability

- (1) The liability of Westfalen – irrespective of the legal basis – is limited to damages caused intentionally by Westfalen or its vicarious agents, through gross negligence or negligently through violation of duties essential for the performance of the contract purpose. The essential obligations for the fulfilment of the purpose of the contract are such obligations, the violation of which would endanger the purpose of the contract and on whose fulfilment the customer can trust.
- (2) In cases of slightly negligent violation of essential obligations for the performance of the contract purpose, the liability of Westfalen is limited in amount to the typical damages in comparable transactions of this kind, which were foreseeable at the time of conclusion of the contract or at the latest at the time of the Commission of the breach of duty.



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- (3) Liability is excluded for lost profits, non-achieved savings or other financial losses due to delays, material defects or defects in title, except in the case of liability for intent.
- (4) Any further liability for compensation for damages is excluded – regardless of the legal basis.
- (5) Claims for compensation for damages due to the absence of a quality guarantee and due to injury to life, body or health according to the Product Liability Act or due to other mandatory statutory provisions remain unaffected.
- (6) Any damages caused by the customer due to illegal commissioning or incorrect, forceful or negligent treatment is excluded from Westfalen's liability.

### 6. Payment

Invoices are to be paid immediately upon receipt without deduction. Payments shall only be deemed to have been made in good time if Westfalen is able to access the funds on the due date.

### 7. Payment Default

- (1) The customer shall be in default at the latest if he does not pay a demand within 30 days of the due date and receipt of an invoice or an equivalent payment schedule.
- (2) In the event of late payment, Westfalen is entitled to claim interest on arrears in the amount of the statutory provisions. If Westfalen has demonstrably incurred a higher damage caused by the default, Westfalen is entitled to assert this.
- (3) Westfalen is entitled to charge reminder fees covering costs for payment reminders.
- (4) In the event of a late payment, Westfalen shall have the right, as long as this has not been eliminated, to discontinue the contractual services or to only provide them in exchange for an immediate cash payment. Set-offs against counter-claims are not permitted unless they result from an undisputed or legally established demand.

### 8. Set-off and Withholding

The customer is only entitled to a right to set off and/or retention if his counter-claims are legally established or undisputed by Westfalen.

### 9. Right Of Retention

The customer is only authorised to exercise a right of retention to the extent that his counter-claim is based on the same contractual relationship.

### 10. Provision of Containers

- (1) Gases are made available to the customer in rental, usage and/or deposit-paid cylinders depending on the cylinder size and type of gas. The terms and conditions agreed in the underlying supply and rental agreements for supply and supply facilities of Westfalen shall also apply to the purchase of liquid gases.
- (2) **Rental Containers**  
Rental containers and rental pallets are the property of Westfalen and cannot be sold. The rental containers remain the unseizable and unencumbered property of Westfalen, if and when used in a specific case, as they are only connected to the ground for a temporary purpose within the meaning of § 95 of the German Civil Code. The rental containers and rental pallets are only rented to the customer for the transport and removal of the gas filling purchased from Westfalen. The transfer of containers and pallets to third parties or any other use is not permitted for safety reasons. The rental charges for the provided rental containers and rental pallets is based on Westfalen's current price list or are agreed in different rental contracts. The customer shall immediately return the rental containers/pallets to Westfalen after emptying them at his expense. Its/their return is documented out by the drivers or confirmed by a sales partner of Westfalen or as a result of the scanning process. Returned containers will be credited to the account of the customer who purchased the containers and pallets from Westfalen. This also applies to its/their return by third parties. The monthly invoice documents the movements of the goods and is also considered as proof of the customer's Westfalen stock of cylinders. The customer is liable for the loss or damage to the containers and pallets which are provided to him on a rental basis beyond the usual wear and tear in the case of normal use. If the customer does not return containers or pallets or in a state so that restoration work is possible with selected means, he must replace the replacement value. Replacement containers or pallets for the fulfilment of the return obligation shall not be accepted.

### (3) Deposit-paid Containers

Westfalen provides selected products in deposit-paid containers. In the case of deposit-paid containers, the customer is charged a deposit fee to ensure their return to Westfalen. In the case of the return of a usable empty deposit-paid cylinder, the customer is entitled to obtain a new deposit-paid cylinder or to demand reimbursement of the deposit without making a new purchase. The return of the deposit-paid cylinder and reimbursement of the deposit fee is limited to a period of 12 months from the date of the last purchase. After the end of the business relations, the deposit-paid pallets are to be returned to Westfalen immediately, at the latest within 3 months, otherwise Westfalen has the right to invoice for the difference between the actual amount of the paid deposit and the new purchase value.

### (4) Usage Containers

If a container is provided to the customer against payment of a one-time charge for use, he shall acquire the right to use this container for the time of the one-time or recurring gas supply from Westfalen in a usage container. When returning empty and reusable containers, the customer has the right, against payment of just the gas price, to re-purchase a filled usage container for further use. A renewed fee for use shall be waived in this respect. If the customer returns only empty goods without purchasing new gas from Westfalen, his right of use shall expire. The usage fee is not refunded.

### (5) Customer Containers

Customer's containers are filled and made available for collection if and insofar as Westfalen has no other instructions. Westfalen is entitled to have customer containers inspected and prepared in accordance with the applicable regulations before filling them. The costs for this are borne by the customer.

### 11. Return Shipments

The customer must use the original packaging when returning goods and accessories, even if this was damaged as a result of opening it for the function check. The costs of the return shipment shall be borne by the customer.

### 12. Extraction of Gases

- (1) The gases may only be used in the containers in accordance with the recognised rules and regulations of technology.
- (2) For liquid and pressurised gases, the respective extraction quantities must be limited in accordance with their physical properties in order to ensure a trouble-free operation and utilisation of the container contents.
- (3) Any residual contents in returning containers will not be reimbursed.
- (4) Gases supplied in containers are only intended for consumption by the customer.

### 13. Operational Safety

- (1) Work on the gas system and the container may only be carried out by Westfalen or by service partners authorised by Westfalen, as the operational safety is at risk otherwise.
- (2) Westfalen is to be given a test certificate for all work. In the event of unskilled changes, Westfalen is obliged, on the basis of the technical rules, to discontinue the gas supply without the customer having any claims or rights against Westfalen arising from it. Any restoration in the operating state shall be carried out at the expense of the customer.
- (3) If the customer has reason to believe that the system operated by him is leaking or is not working properly in any other way, he must immediately shut down the system and immediately notify Westfalen. Westfalen's warranty for devices shall lapse if the goods are modified by the buyer himself or a third party through the installation of foreign parts or the rectification of possible defects without the prior written consent of Westfalen.

### 14. Retention Of Title

- (1) The delivered goods remain the property of Westfalen until all claims against the customer arising from the purchase contract have been settled in full.
- (2) The customer is, however, entitled to process the goods supplied under reservation of title within the scope of his business operations as prescribed and/or to sell them to third parties subject to retention of title. The pledging or transfer by way of security of the goods is prohibited as long as it is subject to retention of title.
- (3) The processing, mixing or combining of reserved goods with other materials is always carried out on our behalf, without any liability for Westfalen arising from this.



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- (4) The retention of title shall also extend to the products resulting from the processing, mixing or combination of the goods at their full value, wherein Westfalen shall be considered as the manufacturer. If, in the case of processing, mixing or combination with goods of third parties, their proprietary right continues to exist, Westfalen shall acquire co-ownership in proportion to the invoice values of the processed, mixed or connected goods. In addition, the same applies to the product that is produced, as to the goods subject to retention of title.
- (5) If goods subject to retention of title are sold without immediate payment by the customer or are connected to a property, the customer already now assigns his claim to the consideration in full to Westfalen for security reasons; Westfalen accepts the assignment. The customer is entitled and obliged to collect the assigned claim as long as Westfalen has not revoked this authorisation. The customer shall post the collected amounts separately and shall immediately discharge them to Westfalen.
- (6) If the value of the obtainable value of the collateral to be secured against the customer exceeds by more than 10%, Westfalen will release any previously fully paid goods.

### 15. Delivery by Third Parties

Westfalen may also have the delivery and service obligations executed by third parties without thereby affecting the rights and obligations of the customer toward Westfalen.

### 16. Electronic Communication

- (1) If the customer consents to electronic communication and stores his email address for this purpose, Westfalen shall be entitled to electronically send the usual and in particular any communication connected with the customer contract. This includes, for example, invoices, order confirmations, delivery notifications or information on changes in terms and conditions.
- (2) Participation in electronic communication is free of charge.
- (3) Messages can be sent to the customer as emails or made available in the mailbox of the on-line portal of Westfalen used by the customer.
- (4) Messages sent electronically to the customer are deemed to have been delivered after one day (24 hours after receipt in the mailbox). If access to the message in the on-line portal is temporarily not possible, this circumstance will be considered to have lasted for 24 hours.
- (5) The customer has the obligation to ensure that during his participation in electronic communication Westfalen emails are sent to the available email address of the customer. Changes to the email address must be notified directly to Westfalen or entered into the on-line portals of Westfalen provided for this purpose. Westfalen shall not be liable for any disadvantages the customer may suffer as a result of the omission of this obligation.
- (6) The customer has the right at any time to give his consent to the electronic deactivation of the function via the respective on-line portal of Westfalen.

### 17. Applicable Law

The contract concluded between the customer and Westfalen is exclusively subject to the law of the Federal Republic of Germany, with the express exclusion of the UN Convention on contracts for the International Sale of Goods.

### 18. Legal Jurisdiction

- (1) The legal jurisdiction for all disputes arising from and/or in connection with the contractual relationship between Westfalen and the customer is Muenster/Westphalia.
- (2) If, contrary to the information provided, the customer does not have a residence or registered office in the Federal Republic of Germany or has relocated his residence or place of business abroad after concluding the contract or the place of business is not known at the time of the legal action, the place of legal jurisdiction for all disputes arising from and in connection with the contractual relationship between Westfalen and the customer is Muenster/Westphalia.

### 19. Severability Clause, Written Form

- (1) Should individual provisions of this contract be or become invalid or void in whole or in part, the validity of the remaining provisions of this contract shall not be affected thereby. The parties undertake to replace the ineffective or invalid provision with an effective provision that comes closest to the intended economic purpose. The same applies in the case of a loophole.
- (2) Amendments or supplements to this contract must be made in writing or in text form. This also applies to the conditions of this written form requirement.

Mineral oil tax notice for LPG (fuel gas) according to § 107 Sub-section 2 EnergieStV.:

"Tax-sheltered Energy Commodity! May not be used as fuel unless such use is permitted under the Energy Tax Act or the Energy Tax implementing regulation. Any use other than fuel has tax and criminal consequences. The customer must inform us in good time about the use of the ordered goods so that the use of the correct tax can be guaranteed. In case of doubt, please contact your local main customs office."

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